* THE HON'BLE SRI J

+ **W.P.No. 18719 of 2007**

% 12-10-2007

Chinni Subba Rao.

.. Peti

Vs.

$ The Government of Andhra Pradesh, rep. by its Principal Secretary, Revenue IV Department, Secretariat Buildings, Hyderabad and others.

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Respondents

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> HEAD NOTE :

! Counsel Sri M. Radhakrishnaiah for petitio

^ Counsel for respond

Endowments.

^ Counsel for P. Sridhar Reddy for

? CASES REFERRED :-

[1] 1982(2) ALT 3 (NRC)

2 1980 (1) ALT 157

3 1979 (1) ALT 298.

4 1991(II) ALT 673

5 AIR 2001 Supreme Court-2436 equivalent to 2001 SCC 7-106,

6 2001 ALT 3-13 equivalent to 2001 ALD 3-61.

7 2006 ALT-2-115 equivalent to 2006-ALD-1-705.

8 2007(5)ALD 661

[9] 2000-ALT-5-366 equivalent to 2000-ALD-5-544.
[10] 2006 (1) ALD-705

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.18719 OF 2007

Dated: 12 -10-2007

Between:

Chinni Subba Rao.

..Petitioner.

And

The Government of Andhra Pradesh, rep. by its Principal Secretary, Revenue IV Department, Secretariat Buildings, Hyderabad and others.

..Respondents.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.18719 OF 2007

ORDER:

Chinni Subba Rao, the writ petitioner, filed the present writ petition praying for the issuance of a writ, order or direction one in the nature of Mandamus declaring the action of the first respondent-the Government of Andhra Pradesh, represented by its Principal Secretary, Revenue Department, Secretariat Buildings, Hyderabad, in entertaining the representation of fourth respondent, Kotha Bala Veeraiah, as revision petition being illegal, arbitrary and without jurisdiction and further prayed for declaration that the proceedings in

Memo No.36560/Endts IV(1)/2007-1 dated 12.07.2007 as illegal, arbitrary, void and to set aside the same and also pass such other suitable orders.

2. This Court issued rule nisi on 05.09.2007. Counter affidavits of respondent Nos.1 to 3 and respondent No.4 had been filed. With the consent of the counsel on record, the writ petition itself is taken up for final hearing.

3. Sri M. Radha Krishna, the learned counsel representing the writ petitioner had taken this Court through the contents of the affidavit filed in support of the writ petition, the respective stands taken in the counter-affidavits of R1 to R3 and R4 as well and would maintain that the 4th respondent, a non party to the orders made by respondents 2 & 3 cannot file such representation and the first respondent cannot treat the same as revision petition. The learned counsel also would further submit that even otherwise when the leave is said to be pending, even prior to the granting of leave or obtaining of leave, the first respondent has no jurisdiction to make the impugned order. The learned counsel also would maintain that even otherwise as against the orders made by the Regional Joint Commissioner, Endowments Department, Multi Zone-Ii, Tirupathi straight away revision cannot be entertained by the first respondent,

Government. The learned counsel also would maintain that this is not a case of *suo moto* excessive of power, but on application of a party, who is a non party to the proceedings before the Regional Joint Commissioner as well as Assistant Commissioner of Endowments-R2 & R3. Even otherwise, the impugned order also is in violation of the principles of natural justice since no opportunity had been given to the petitioner before making such an order. The learned counsel also would maintain that this is not a case where for the first time the rights of the petitioner are being recognized by the Assistant Commissioner of Endowments. The Assistant Commissioner of Endowments had not passed any independent order and it is only recognizing the prior orders and hence would contend that the Deputy Commissioner of Endowments alone will have jurisdiction to make such an order also cannot be sustained. The learned counsel had taken this Court through the relevant provisions of the Andhra Pradesh Charitable & Hindu Religious Institutions and Endowments Act, 1987 (herein after referred to as 'the Act' for the purpose of convenience) and also placed strong reliance on several decisions to substantiate his submissions.

4. The learned Government Pleader for Endowments had taken this Court through Section 87(1)(h) of the Act and would maintain that in the light of the said provision the question involved is to be decided by the competent authority i.e., the Deputy Commissioner of Endowments and hence, the order made by the Assistant Commissioner of Endowments is wholly without jurisdiction, consequently, the order made even by the Regional Joint Commissioner Endowments purporting to exercise *suo moto* power also is invalid. When that being so, though a representation had been made by the fourth respondent in the light of the clear language of Section 93 of the Act, it has to be taken that the first respondent exercised *suo moto* powers and granted an order of stay, which is perfectly within the purview and jurisdiction of the first respondent and hence, the impugned order cannot be found fault in any one. The learned Government Pleader for Endowments also would maintain that the writ petitioner is at liberty to move appropriate application before the first respondent and get the order vacated, and if the writ petitioner is aggrieved of the same, this remedy by way of writ petition is misconceived in the facts and circumstances of the case.

5. Sri Sridhar Reddy, the learned counsel representing

respondent No.4 had taken this Court through the historical background of the institution and would maintain that respondent No.4 being a person interested is entitled to maintain the revision. The learned counsel also would submit that the revision as such cannot be straight away maintained before respondent No.1 under Section 93 of the Act as against the order made in exercise of *suo moto* power by the Regional Commissioner Endowments, cannot be sustained in the light of Section 3(5) and Section 9 of the Act. Apart from this aspect of the matter, the learned counsel would contend that when the enquiry made by the Assistant Commissioner of Endowments itself is without jurisdiction, it cannot lie in the mouth of the writ petitioner to contend that the revision before the first respondent is incompetent. Hence, the learned counsel would maintain that the writ petition is liable to be dismissed. The learned counsel also placed reliance on certain decisions to substantiate his submissions.

6. Heard the learned counsel. Perused the records. Before taking up the respective stands taken by the parties, it may be appropriate to have a glance as such at the order impugned in the writ petition and the same reads as hereunder:

"GOVERNMENT OF ANDHRA PRADESH
REVENUE (ENDTS.IV) DEPARTMENT
Memo.No.36560/Endts.IV(i)/2007-1,
Dated:12.07.2007

Sub:Revision Petition-Nellore District-filed by K. Bala Veeraiah, s/o. Kotaiah, Nellore District-Against the orders of R.J.C.Endowments, Multi Zone-II, Tirupathi Chittoor Distict- Called for records-Reg.

Ref: R.P. filed by Sri K. Bala Veeraia, s/o. K. Kotaiah, Nellore District, dt. Nil, addressed to Hon'ble M (Endowments).

A copy of the reference cited, together with its enclosures is sent herewith to the Commissioner Endowments, Hyderabad and he is requested to furnish detailed report along with relevant records to Government, immediately.

2. Further Government hereby stayed orders passed by the Regional Joint Commissioner, Multi Zone-II Tirupathi, dated 09.05.2007 in R.P.No.10 of 007 until further orders.

I.V.Subba Rao
Prl. Secretary to Government.

7. It is averred in the affidavit filed in support of the writ petition that one Sri Vakati Sanjeevi Chetty was the founder of Sri Vakati Sanjeevi Chetty Educational Trust, known as Sarvodaya Educational College and P.G.Centre, Nellore. During his life time, Sri Vakati Sanjeevi Chetty executed a will on 15.08.1980 appointing Sri Chinni Chinni Subbarayudu as founder Trustee to the subject Trust, who took care of the development of the college and developed it. Sri C.C.Subbarayudu died on 29.11.2002 after rendering lot of service to the college. After demise of his father Sri C.C.Subbarayudu, the writ

petitioner was appointed as Founder Trustee of the subject institution and the petitioner was authorised to act as a Founder Trustee of the Institution by the Trust. It is also stated that the writ petitioner made representation on 07.04.2004 to the respondent No.3 under whose jurisdiction the institution was functioning, prayed for a declaration that the writ petitioner as a member of founder trustee and to appoint him as Single Trustee under Section 15(3) of the Act. By proceedings, dated 13.05.2004, the respondent No.3, after conducting necessary enquiry and after verifying the Inspectors report and after being satisfied that the father of the writ petitioner late C.C.Subbarayudu was the Founder Trustee as per the will of Sri Vakati Sanjeevi Chetty, Founder of the subject institution, passed orders declaring the writ petitioner as the member of the founder trustee and appointed him under Section 15(3) of the Act as Single Trustee of the subject institution.

> Section 15 of the Act deals with appointment of Board Trustees and Section 15(3) specifies that in the case of any charitable or religious institution or endowment included in the list published under clause (c) of Section 6, the Assistant Commissioner having jurisdiction shall constitute a Board of Trustees consisting of five persons appointed by him:
>
> Provided that the Assistant Commissioner may either in the interest of the institution or endowment or any other sufficient cause or for reasons to be recorded

in writing appoint a single trustee instead of a board of Trustees.

The said order made by the Assistant Commissioner of Endowments Department reads as hereunder:

"PROCEEDINGS OF THE ASSISTANT COMMISSIONER,ENDOWMENTS DEPARTMENT,

NELLORE.

Present: M.S.Ranga Rao. B.A., Assistant Commissioner.
Rc.No.1408/2004 A1, dated 13.05.2004

Sub: Endowments Department-Declaration of Member of the Founter Trustee to "Sri Vakati Sanjeevi Setty Educational Trust" known as Sri Sarvodaya Educational College and P.G.Centre-Nellore Town and District-Orders-Issued.
Ref:(1) Representation dt.17.04.2004 from Sri Chinni Subba Rao.
(2) T/o Rc.No.A1/1408/04, dt.01.05.2004.
(3) Rc.No.51/2004, dated 11.05.2004 from the Inspector, Endt. Department, Nellore.

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One Sri Chinni Subba Rao, s/o. Late Sri C.C.Subbarayulu Setty has filed an application in the reference 1st cited before the Assistant Commissioner, Endowments Department, Nellore for declaring him as Member the Founder Trustee to Sri Vakati Sanjeevi Setty Educational Trust known as Sri Sarvodaya Education College and P.G.Centre-Nellore town and Nellore District.

The said application was sent to the Inspector, Endowments Department, Nellore in the reference 2nd cited for enquiring into the matter and submit his report. He enquired into the matter and submitted the report in the reference 3rd cited.

The Inspector in his report has stated as follows:

Sri Vakati Sanjeevi Setty was the founder of the subject institution. While he was alive he has executed a will dated 15.08.1980 through Notary. Nellore Distict appointed by

Government of A.P. Sri Chinni Chinna Subbarayulu was appointed as Founder Trustee to the subject institution, after his death recognising his services and developments made to the subject institution to the stage of post graduation of the college. Sri C.C.Subbarayulu demised on 29.11.2002. During his tenure he made a lot of service to the college for its up lift and development at large. After close verification of Inspector's report, the following order is passed Late C.C.Subbarayulu father of the present applicant was acted as Founder Trustee as per the Will executed by Late Sri Vakati Sanjeevaiah Setty and thereon Sri C.C.Subbarayulu was appointed as Founder Trustee of the subject institution. After his demise his son Sri Chinni Subba Rao was authorised to act as Founder Trustee of the institution. The Statute of Sri C.C.Subbarayulu was installed in the premises of the subject institution on 15.10.2003 in Memory of his services rendered to the institution. There is no record except the Will executed by Sri Vakati Sanjeevaiah Setty on 15.08.1980. In the best development of the institution and Will executed by late Sri Vakati Sanjeevaiah Setty which was certified by the Notary on 21.07.1997. In view of said postition, Sri Chinni Subba Rao, s/o.Late Sri Chinni Chinna Subbarayulu Setty is declared as Member of the Founder Trustee U/s.15(3) of the Act 30/87 and as per the A.P.Ordinance No.7/2002, dt. 24.08.2002 issued by the Government to the said institution.

The Inspector Endowments Department, Nellore is authorised to administer the oath of office and secrecy to Sri Chinni Subba Rao and report.

Sd/-
Assistant Commissioner.

It is stated by the writ petitioner that the writ petitioner has been functioning as such being authorised under the provisions of the Act. It is also averred in para 4 of the affidavit filed in support of the writ petition that *suo moto* revision was taken up by the respondent No.2, the Regional Joint Commissioner of Endowments

Department, Multi Zone-II Tirupathi under Section 92 of the Act as against the orders of respondent No.3 dated 13.05.2004 in R.P.No.10/04 and the petitioner participated in the enquiry and brought to the notice of respondent No.2 that his late father Sri C.C.Subbarayudu was appointed as Founder Trustee by virtue of the Will dated 15.08.1980 by the Founder Sri Vakati Sanjeevi Chetty of the subject institution. Respondent no.2, who had conducted the enquiry had passed *ex parte* orders on 26.12.2005 setting all the respondents in R.P.No.10/2004 *ex parte* and also set aside the orders dated 13.05.2004 of respondent No.3. The petitioner filed an application to set aside the *ex parte* order dated 26.12.2005 and permit the petitioner to take part in the enquiry. Since the same was not considered, the petitioner filed W.P.No.14301 of 2006. The said writ petition was disposed of by this Court, by order dated 29.12.2006 as hereunder:

> "As the petitioner has filed an application dated 16.02.2006 seeking setting aside of the *ex parte* order, impugned herein, it would not be appropriate to this Court to go into the validity of the 2nd respondent's order in R.P.No.10 of 2004.
>
> In the circumstances and on the view stated above, the writ petition is disposed of directing the 1st respondent to make appropriate administrative arrangements for appointing the Regional Joint Commissioner, Endowments Department, Multi Zone-II,

> Tirupati either by conferring appropriate power in an incharge officer, by posting or causing to be posted an officer as Regional joint Commissioner or alternatively the 1st respondent himself taking up the hearing of the application, as the power under Section 92 is the power of the Commissioner. The first respondent shall ensure that the application of the petitioner dated 16.02.2006 is disposed of expeditiously and preferably within a period of 30 days from the date of receipt of a copy of this order.
>
> The writ petition is disposed of at the stage of admission after hearing the learned Government Pleader for Endowment. In the circumstances no order as to costs.

It is further stated that respondent No.2 conducted an enquiry and heard the petitioner in pursuance of the order referred to above and respondent No.2 after considering the material available on record having found that there is no dispute with respect to the claim of declaration of the founder family member for the subject institution upheld and confirmed the orders dated 13.05.2004 of respondent No.3, declaring the petitioner as Member of the Founder Trustee and appointed the petitioner as Single Trustee under Section 15(3) of the Act. It is also stated that respondent No.4, who was a non party to the proceedings referred to supra appears to have filed a representation before the Minister for Endowments, A.P., Hyderabad, which was treated as revision petition by the respondent No.1 and respondent No.1 stayed the orders of respondent No.2. The said

orders of respondent No.1 are ex parte orders passed behind the back of the writ petitioner and without making him as a party in the said proceedings. It is also averred that the impugned order made by the first respondent is without jurisdiction and without affording opportunity to the writ petitioner and also is bad in law.

It is also stated that under Section 87 of the Act the Deputy Commissioner has jurisdiction to inquire into and decide any dispute as to the question whether a person is a Founder or a Member of the family of the founder of an institution or endowment. The said power to decide a dispute if any is vested only with the Deputy Commissioner having jurisdiction. Against every decision of the Deputy Commissioner, an appeal lies to the District Court, under Section 88 of the Act. Respondent No.1 has no power and jurisdiction vested in it to entertain the alleged representation of respondent No.4 and stay the orders of respondent No.2 and 3. It is stated that respondent No.4 is no way concerned with the Trust or the subject institution nor he is a party to the proceedings before respondent Nos. 2 and 3. Respondent No.4 has purportedly acted with ulterior motive and approached the Minister. And as the consequence of the politically motivated action of respondent No.4, respondent No.1

without any power vested in it and without jurisdiction appears to have entertained the same as revision petition and passed impugned orders without any notice to the petitioner. It is further stated that a reading of the impugned proceedings show that, petitioner is not a party to the proceedings. Further it goes to show that the impugned orders are not even marked to the petitioner. Respondent No.4 with sinister motive has prevailed upon respondent No.1 to pass the impugned *ex parte* order. Further, impugned order does not even spell out any reasons whatsoever as to why respondent No.1 has stayed the orders of respondent No.2. It is stated that respondent No.4, who has nothing to do with the Trust or its affairs and who is not a party to the proceedings before respondent Nos.2 and 3 has obtained *ex parte* orders dated 12.07.2007 from respondent No.1 and has lodged a caveat before this Court which clearly shows that the whole exercise is malafide.

It is also further averred that the father of the petitioner was appointed as a Founder Trustee in the year 1980 itself and his appointment as Founder Trustee was never disputed. Baseless allegations are now made by respondent No.4. Being his son the petitioner duly

recognised as the member of Founder Trustee and therefore appointed as Trustee of the subject institution by the respondent No.3 under Section 15(3) of the Act. Respondent No.4 cannot question the same. He is neither the person aggrieved nor he is interested person in the affairs of the Trust. Respondent No.1 cannot entertain the alleged application of the 4th respondent which is not only arbitrary and illegal but also without jurisdiction. Further the alleged exercise of power by respondent No.1 is a colourable exercise of power for no justified reasons. It is also further stated that the petitioner is continuing as a Member of the Founder Trustee till today and as a Single Trustee of the institution and in such circumstances, being left with no other option, this writ petition has been filed praying for appropriate reliefs.

8. In the counter-affidavit filed by the first respondent specific stand had been taken that both the orders made by respondent No.3, the Assistant commissioner of Endowments and respondent No.2, the Regional Joint Commissioner, Endowments are illegal and without jurisdiction. The Regional Joint Commissioner can only exercise powers that are delegated to him by the Commissioner. There is no reference of the Commissioner confirming the decision of Assistant

Commissioner or Regional Joint Commissioner in the petitioner's affidavit though it is mandatory. The Assistant Commissioner or Deputy Commissioner or Commissioner or Government have been appointing the trustees and recognizing the founder trustee depending upon the classification of the institution under Section 6(1)(a) or (b) (c) up to 2002. It is also stated that under Section 87(1)(h) of the Act which was introduced by way of amendment Act 27 of 2002 which came into force from 23.12.2002, it is the Deputy Commissioner, who is competent to entertain an application and decide as to 'whether a person is founder or a member from the family of founder of an institution of endowment'. The relevant portion of Section 87 reads as hereunder:

(1) "The Deputy Commissioner having jurisdiction shall have the power, after giving notice in the prescribed manner to the person concerned, to enquire into and decide any dispute as to the question.
(a) to (g) omitted as not relevant.

(h) Whether a person is a founder or a member from the family of the founder of an Institution or Endowment.

(2) The Commissioner may pending his decision under sub-section (1), pass such order as he deems fit for the administration of the property or custody of the money belonging to the institution or endowment.

(3) Every decision or order of the Deputy Commissioner on confirmation by the Commissioner under this section shall be published in the prescribed manner".

It is also further stated that this Court in (i) Inturi Venkayya and 3 others Vs Government of A.P & 4 others in W.P.No.26390 of 2003, on 24.12.2003 and (ii) Guru Prasad v. Commissioner of Endowments Department and 3 others, in W.P.No.25598 of 2003, on 9.12.2003, expressed the same view, so the Assistant Commissioner has no power to declare the petitioner as a member of family or the founder trustee. Though Joint Commissioner is a superior officer, he cannot usurp the functions of Deputy Commissioner. The order passed by the Deputy Commissioner under Section 87 is a quasi judicial order vide Teki Venkata Ratnam v. Deputy Commissioner of Endowments in AIR 2001 SC page No.2436. It has to be confirmed by the Commissioner under Section 87(2)(3) & (5). If any person is aggrieved by the orders of Deputy Commissioner under section 87 he may prefer an appeal to the District Judge under Section 88 of the Act. Further, the allegation that respondent No.4, who filed revision petition before the Government, is not a party to the enquiry conducted by the Assistant Commissioner and Joint Commissioner may be true . However as a citizen or as a person interested in proper running of the Trust, he is entitled to question the illegal orders passed by the Assistant Commissioner and Joint Commissioner. He is a

person coming within the definition of "person having interest" within section 2(18) of the Act. Even otherwise the Government has power to call for the records *suo moto*, examine the same and pass orders under Section 93 of the Act.

Section 2 of the Act deals definitions and Section 2 (18) of the Act defines 'person having interest' includes-

(a) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs;

(b) in the case of a charitable institution or endowment or a religious institution other than a math or a religious endowment a person who is entitled to attend at or is in the habit of attending the performance of service, charity or worship connected with the institution or endowment or who is entitled to partake or is in the habit of partaking in the benefit of any charity or the distribution of gifts thereat;

(c) in the case of a specific endowment a person who is entitled to attend at or is in the habit of attending the performance of the service or charity or who is entitled to partake or is in the habit of partaking in the benefit of the charity:

Section 93 of the Act dealing with power of Government to call for records and pass orders, reads as hereunder:

"(1) The Government may either suo motu or on an application call for and examine the record of the Commissioner or any Deputy Commissioner or any Assistant Commissioner or any other Officer subordinate to them, or of any Executive Officer or any trustee of a charitable or religious institution or endowment, other than a math or specific endowment attached to a math in respect of any administrative or quasi-judicial decision taken or order passed under this Act, but not being a proceeding in respect of which a suit or an appeal or application, or a reference to Court is provided by this

Act, to satisfy themselves as to the correctness, legality or propriety of such decision or order taken or passed, and if in any case, it appears to the Government that such decision or order should be modified, annulled, reversed or remitted for reconsideration, they may pass orders accordingly:

Provided that the Government shall not pass any order prejudicial to any party unless he has had an opportunity of making his representation.

(2) The Government may stay the execution of any such decision or order pending the exercise of their powers under sub-section (1) in respect thereof.

(3) No application to the Government for the exercise of their power under this section shall be made in respect of any matters unless an application had already been made in respect of the same matter to the Commissioner under Section 92 and had been disposed of by him.

(4) Every application to the Government for the exercise of their powers under this section shall be made within ninety days from the date on which the decision or order to which the application relates was received by the applicant.

Further specific stand had been taken that the Government has power to call for records and examine the records of the Subordinate Officers, modify, anull, remit or permit for reconsideration and the Government has power to grant stay as well. Further, specific stand had been taken that the petitioner can file a petition to implead himself as party to the revision petition, if he had not already been impleaded.

9. The fourth respondent filed counter affidavit stating that he served as a member of Sri Sarvodaya Education Committee, which is a registered society bearing

No.28/71 for a period of 6 years till the year 1996 and the said education committee is running a college in the name and style 'Sri Sarvodaya College' in Nellore Town. It is offering courses in Intermediate, Degree in Arts, Sciences and Commerce, Post Graduate courses in Arts and Commerce apart from imparting education for appearing in Open University. During his tenure, as a member of the education committee, the student strength of the college was more than 1500 per annum. It is further stated that originally, late Sri Vakati Sanjeevi Setty established a college partly with his funds and with the contributions raised from the general public. On his demise, several irregularities have taken place in the administration of the college. After the death of the above said Vakati Sanjeevi Setty, the father of the writ petitioner, one Sri C.C.Subbarayulu Chetty, styling himself as his nominee, acted as Treasurer and thereafter, as Secretary and Correspondent of Sri Sarvodaya College Committee. During his tenure, he committed several irregularities and misappropriated huge amounts belonging to the college committee. Therefore, the Educational Committee was constrained to file O.S.No.75 of 1997 on the file of the I Additional District Judge, Nellore for recovery of Rs.5,15,556/- with subsequent interest thereon. The

learned I Additional District Judge, Nellore was pleased to decree the suit for a sum of Rs.2,30,400/- having found that he misappropriated the said amounts belonging to the Education Committee. The said Subbarayulu Chetty preferred an appeal in A.S.No.200 of 2003 before this Court and the said appeal is pending. Pending the appeal, the father of the 4th respondent Subbarayulu Chetty died on 29.11.2000 and the writ petitioner herein as his legal representative stepped into the shoes of his late father and he has to discharge the decretal amount from the estate of late C.C.Subbarayulu Chetty. In order words, there is conflict of interest between the writ petitioner and the institution. Hence the petitioner cannot be permitted to act as founder member. Further, it is stated that during his tenure as member of the Education Committee, 4th respondent put in all the efforts for the development of the institution and the 4th respondent is interested in the welfare of the institution. Unfortunately, on account of misdeeds of the earlier managements, during the tenure of the father of the writ petitioner the student strength of the college has drastically come down and presently there are only 150 students studying in the college. It is also stated that this respondent came to

know that the petitioner herein managed to get an order from the Assistant Commissioner of Endowments, Nellore, the 3rd respondent herein recognizing him as a member of the founder's family of the institution in his proceedings Reference.No.1408/2004 Ex.A.1, dated 13.05.2004. The 3rd respondent seems to have passed an order basing on the report said to have been submitted by the Inspector of Endowments, Nellore stating that Sri Vakati Sanjeevi Setty executed a Will dated 15.08.1990 appointing the father of the writ petitioner as the founder member and that the said will was certified by the Notary on 21.07.1997 and on his demise, the writ petitioner sponsored plastering works to the rooms, by spending a sum of Rs.40,000/-. It is also stated that as soon as the said order was passed, the Regional Joint Commissioner, Endowments Department, Multi Zone-II Tirupathi, took up *suo moto* enquiry by invoking the powers under Section 92 of the Act having been satisfied that the reasoning adopted by the 3rd respondent was illegal and unsustainable. The same was numbered as R.P.No.10 of 2004. The Regional Joint Commissioner was also passed an interim order on 17.07.004 staying the order recognizing the appointment of the petitioner as founder

trustee and directed not to proceed further with the administration of the institution by the writ petitioner. A copy of the same is filed herewith.

It is further averred in para 8 that the second respondent, having taken up the matter as *suo moto*, while ordering notice to the respondents herein and called for the records from the file of the 3rd respondent. Since there was no representation on behalf of the writ petitioner, despite notice, he was set-ex parte and orders were passed on 26.12.2005 setting aside the order of the 3rd respondent dated 13.05.2004 recognising the writ petitioner as founder trustee. It appears that the writ petitioner seems to have filed a petition for restoration on 16.02.2006. The second respondent straight away proceeded to dispose of the R.P. even without notice to other respondents on the restoration application and even without restoring the R.P. The second respondent basing on a counter affidavit said to have been filed by the petitioner stating that the founder late Vakati Sanjeevi Setty executed a Will dated 15.08.1980, his father was appointed as Founder Trustee and he made developments to the College and on his demise, he sponsored plastering works in the rooms by spending

Rs.40,000/-. As if, what are all stated in the counter affidavit was sacrosanct, even without holding any enquiry, the 2nd respondent confirmed the order passed by the 3rd respondent recognizing the writ petitioner as the founder trustee in his order dated 9.5.2007 in R.P.No.10 of 2004. It is also stated that in the interest of the Institution, 4th respondent filed a revision petition before the Government of Andhra Pradesh under Section 93(1) of the Act duly impleading the respondents 1 and 2, the Inspector of Endowments and the writ petitioner as a respondents in the said revision petition. The 4th respondent also filed an application under Section 93(2) of the Act seeking stay of the order pending the revision. The Government while admitting the writ petition and calling for the records stayed the impugned orders until further orders. The fact remains the writ petitioner has not been acting as a founder trustee since the year 2004 and the order of the 3rd respondent recognizing him as a founder trustee has not been implemented till date. Further, it is averred that there are no grounds much less valid grounds are made out in the writ petition. It is also stated that the allegation that during the life time of Sri Vakati Sanjeevi Chetty, he executed a will on 15.08.1980

appointing Chinni Chinni Subbaryudu as founder trustee is denied. The further allegation that the said C.C.Subbarayudu rendered service to the college and developed the same is denied. On the other hand the civil Court found that the said C.C.Subbarayudu was guilty of misappropriating the college funds and therefore grant a decree for the recovery of Rs.2,30,400/- in O.S.No.75 of 1997 on the file of the I Additional District Judge, Nellore. The petitioner secured an order from the 3rd respondent recognizing him as founder trustee for extraneous considerations. The petitioner is not entitled to be appointed as founder trustee as he or his father never founded the Institution nor contributed for its development. Late Vakati Sanjevi Chetty left behind his children. The purported will must have been invented for seeking the appointment of a founder trustee. His father was never recognized by any competent authority as founder trustee. The allegation in para 3 that the petitioner has been functioning as founder trustee is denied. It is also further stated that second respondent passed an order in R.P.No.10 of 2004 just before his retirement. Further specific stand had been taken that a statutory revision was filed before the Government duly impleading the

petitioner as 4th respondent. Further, the allegations made in para 7 had been denied and the jurisdiction of the Deputy Commissioner under Section 87(h) of the Act and the *suo moto* revisional power of the Government under Section 93 of the Act and appeal to District Court under Section 88 of the Act also had been referred to. Further, it is stated that the 4th respondent prayed for leave to file revision before the first respondent and the same is pending.

It is also averred in para 14 of the counter affidavit of Respondent No.4 that as a matter of fact the founder late Vakati Sanjeevi Chetty was acting as a founder trustee till his death in August, 1981. As a matter of fact late Vakati Sanjeevi Chetty died in the month of August, 1981 after executing his last will and testament which was duly registered and acted upon appointing his grandson one Sri K.C.Kumar as the member of the committee of the institution. A resolution to that effect was passed by the committee of the Institution on 13.09.1981. But the above said K.C.Kumar subsequently resigned from the said committee and opted out. The concept of founder trustee was envisaged for the first time by the Hon'ble Supreme Court in Pannalal Bansilal Patil's case reported in AIR

1996 Supreme Court 1023. The Legislature in acted amendment Act 27 of 2002 by amending section 17 of the Act defining 'Founder'. In the same amendment Act Section 87 has been amended conferring jurisdiction on the Deputy Commissioner of Endowments to adjudicate the dispute about founder trusteeship. The amendment came into force w.e.f 23.12.2002. Hence, the Assistant Commissioner has no jurisdiction to decide as to the person entitled to be recognized either as a founder or member belonging into founder's family. Therefore appointing the petitioner's father as founder trustee in the year 1980 is invented for the purpose of this litigation. Neither the petitioner nor his father are entitled to be recognized as founder trustees. The institution being a charitable institution established for the benefit of the people in public interest any person can challenge the illegal order obtained by the petitioner for extraneous considerations by pressing into service the invented and fabricated will. Even otherwise also once the office is hereditary trusteeship has been abolished under Section 16 of Act 30 of 1987, even the founder has no right to appoint a third party for being recognized as a member belonging to his family. After narrating certain other further factual details, the 4th respondent prays for

dismissal of the writ petition.

10. Section 92 of the Act deals with power of the Commissioner to call for records and pass orders, and the said provision reads as hereunder:

> "(1) The Commissioner may either suo motu or on application, call for and examine the record of any Deputy Commissioner or Assistant Commissioner, or of any other Officer subordinate to him or of any Executive Officer or any trustee of a charitable or religious institution or endowment, other than a math or a specific endowment attached to a math in respect of any administrative or quasi-judicial decision taken or order passed under this Act, but not being a proceeding in respect of which a suit or an appeal or application or reference to a court is provided by this Act to satisfy himself as to the correctness, legality or propriety of such decision or order taken or passed, and if in any case, it appears to the Commissioner that such decision or order should be modified, annulled, reversed or remitted for reconsideration, he may pass orders accordingly.
> (2) The Commissioner shall not pass any order prejudicial to any party under sub-section (1), without giving him an opportunity for making representation.
> (3) The Commissioner may stay the execution of any decision or order of the nature referred to in sub-section (1) pending the exercise of his powers under the said sub-section in respect thereof.
> (4) Every application to the Commissioner for the exercise of his powers under this section shall be preferred within ninety days from the date on which the order or proceeding to which the application relates was received by the applicant.

Section 2(6) of the Act defines 'Commissioner' as in this Act unless the context otherwise requires 'Commissioner' means:

> "the Commissioner and the Additional Commissioner

appointed under sub-section (1) of Section 3 and includes every officer who for the time being exercises the powers and performs the functions of a Commissioner under this Act or the rules made thereunder in respect of any charitable or religious institution or endowment as specified in sub-section (5) of Section 3".

Section 3 of the Act deals with appointments etc., of Commissioner, Additional Commissioner, Regional Joint Commissioner, Deputy Commissioner and Assistant Commissioner, and Sub-Section (5) of Section 3 reads as hereunder:

"The Government may direct the Commissioner, Additional Commissioner and every Regional Joint Commissioner, Deputy Commissioner or Assistant Commissioner appointed under sub-section(1) to exercise the powers and perform the functions conferred on or entrusted to the Commissioner, Additional Commissioner or Regional Joint Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be, by or under this Act in respect of charitable or religious institutions or endowments.

Section 9 of the Act dealing with powers and functions of Regional Joint Commissioner, reads as hereunder:

"Subject to the administrative control of the Commissioner a Regional Joint Commissioner shall exercise such powers and perform such functions of the Commissioner as may, from time to time, be determined by the Government in respect of institutions and endowments in the region and any order passed or proceeding taken by a Regional Joint Commissioner in the exercise of such powers and the performance of such functions shall be deemed to be an order of the Commissioner for the purpose of this Act.

11. Certain submissions were made in relation to the exercise of *suo motu* power by the second respondent-Regional Joint Commissioner, Endowments and whether a revision would lie as against such order to the first respondent, the Government. Strong reliance was placed on the decision of this Court in K. MADUSUDANA RAO v. SREESEETHARAMA CHANDRASWAMY VARI DEVASTHANAM, BHADRACHALAM[1] wherein a Division Bench while dealing with Sections 82 and 83 of the Act of 1966 held that since the aggrieved party had a right to file a revision petition before the Commissioner against an order of the Executive Officer, it will be a bar to his filing a revision petition direct before the Government under Section 83(1). Any order made pending revision petition filed by the aggrieved party, which order is not traceable to the exercise of *suo motu* powers vested in the Government under Section 83(1) cannot be sustained.

Reliance was also placed on SREE SEETHARAMACHANDRASWAMY VARI DEVASTHANAM, BHADRACHALAM, REP. BY SIR MULLAPUDI HARICHANDRAPRASAD, CHAIRMAN, BOARD OF TRUSTEES v. THE GOERNMENT OF

ANDHRA PRADESH, REPRESENTED BY DEPUTY SECRETARY TO GOVERNMENT REVENUE (ENDOWMENTS-II) DEPARTMENT[2]. It is needless to say that this matter was carried by way of writ appeal and the Division Bench had delivered the decision already referred to supra.

Reliance was also placed in C. KANNAIAH CHETTY v. THE GOVERNMENT OF ANDHRA PRADESH[3]. In KALLURAM ALIAS MUNNALAL v. THE COMMISSIONER OF ENDOWMENTS, A.P. HYDERABAD[4], the Division Bench observed that sub-Section (3) of Section 93 is not a bar for any person to invoke the jurisdiction of the State Government in respect of an order passed by the Commissioner of Endowments. So far as the orders passed by officers who are subordinate to the Commissioner are concerned, unless the revisional jurisdiction of the Commissioner is invoked in respect of those orders, no person can approach the State Government by way of a revision under Section 93(1) of the Act.

12. The question of competency or incompetency of the second respondent to make an order in exercise of *suo motu* powers and also the relevant statutory

provisions under Section 3(5) and Section 9 of the Act need not detain by this Court any further or any longer for the reasons specified intra. Section 3 of the Act already had been referred to supra. It is no doubt true that the leave application filed along with the revision before the first respondent by the fourth respondent is said to be pending. On a careful reading of the order made by the Assistant Commissioner of Endowments, Nellore, which had already been specified supra, in the light of the clear provision under Section 87(1)(h) of the Act specified above and also the nature of the order, which was made and in the light of a clear language of the provision, this Court is of the considered opinion that the concerned Deputy Commissioner, Endowments alone is competent to make such an order even if Section 87(1)(h) of the Act is read along with Section 15(3) of the Act aforesaid. There cannot be any split up of the order as such since as far as the enquiry relating to the founder member is concerned, the competent authority is the Deputy Commissioner of Endowments, within whose jurisdiction an institution may fall.

13. In VENKATA RATNAM v. COMMISSIONER, ENDOWMENT[5] it was observed at para 7 as hereunder:

"Section 87 of the Act in Chapter XII relating to enquiries,

to the extent it is relevant for the present purpose reads:-“87. Power of Deputy Commissioner to decide certain disputes and matters:- 1) The Deputy Commissioner having jurisdiction shall have the power, after giving notice in the prescribed manner to the person concerned, to enquire into and decide any dispute as to the question (A) Whether an institution or endowment is a charitable institution or endowment; (B) whether an institution or endowment is a religious institution or endowment;(c) to (g)… (2) to (4)..(5) Any decision or order of the Deputy Commissioner deciding whether an institution or endowment is not a public institution or endowment shall not take effect unless such decision or order is confirmed by an order of the Commissioner; (6) The presumption in respect of matters covered by Cs (a), (b), (c), (d) arid (e) in sub section (1) is that the institution or the endowment is public one and that the burden of proof in all such cases shall lie on the person claiming the institution or the endowment to be private or the property or money to be other than that of a religious endowment or specific endowment as the case may be. “section 160 states as follows:-“ 160. Overriding effect of the Act:- (1) notwithstanding any compromise, agreement, scheme, judgment, decree or order of a Court, Tribunal or other authority or any custom or usage governing any charitable or religious institution or endowment or Tirumala Tirupathi Devasthanams, the provisions of this Act shall with effect on and from, the date of the commencement of this Act; prevail in so far as they relate to the matters governed by the corresponding provisions in any such compromise, agreement, scheme, judgment, decree or order or any custom or usage and such corresponding provision shall thereafter have no effect.(2)….

14. Strong reliance was placed in PRATHI SUBBAIAH CHETTY v. GOVERNMENT OF ANDHRA PRADESH REVENUE (ENDOWMENTS) DEPARTMENT[6]. In G. RAJENDRANATH GOUD v.

PRINCIPAL SECRETARY, ENDOWMENTS DEPARTMENT, GOVERNMENT OF ANDHRA PRADESH [7] The learned Judge of this Court at para 20 observed as hereunder:

> "The list of subject matters into which an enquiry can be conducted by the Deputy Commissioner is exhaustive. When a dispute arises whether a new endowment is a charitable or religious institution, whether such institution is religious institution, whether any property is an endowment to a charitable institution, whether any institution or endowment is wholly or partly secular or religious character are core subjects in relation to which a dispute often arises in the context of religious and charitable institutions. Apart from that the Deputy Commissioner is competent to decide all disputes in relation to the property endowed to a charitable or religious institution. A question as to whether any person is entitled to honours or perquisites in any charitable or religious institution can also be decided by the Deputy Commissioner. By reason of the amendment Act of 2002, the Deputy Commissioner is now competent to enquire into the question whether a person is a founder or member of founder's family. While conducting enquiries, the Deputy Commissioner is required to follow the procedure applicable under Code of Civil Procedure, 1908 and apply the provisions of the Indian Evidence Act, 1872 (see Section 149). As per Section 88 of the Act, the orders of the Deputy Commissioner passed under Section 87 are made subject to an appeal by the aggrieved person to the District Judge and Section 91 provides for revision to the High Court against any order passed by the Court and the orders of the District Court. Though Sections 90, 92, 93 and 94 provide for an appeal, revision and review, the orders passed by the Deputy Commissioner under Section 87 are not made appealable or revisable or reviewable by the Departmental authorities and the Government. The power conferred by the Deputy Commissioner to conduct enquiry duly following the

provisions of CPC and Evidence Act is essentially the power to adjudicate the rights of the person or a group of persons in relation to or in connection with a charitable or religious institution or endowment. It is judicial power though it is exercised by a statutory authority i.e., Deputy Commissioner appointed under Section 3(1) of the Act. That is the reason why the orders passed by the Deputy Commissioner under Section 87 are outside the purview of departmental appeal though some of the orders passed by the Deputy Commissioner in other capacity are made subject to appeal under Section 90 and revision under Sections 92 and 93. Presumably, for this reason that the Government thought it fit to confer the power on the Deputy Commissioner under Section 87 to enquire and adjudicate into the question whether a person is founder or a member of the founder's family. It may be mentioned that the right to establish a charitable or religious institution and the right to administer such institution is a very valuable right guaranteed by Articles 25 and 26 of Constitution of India and therefore in the opinion of this Court the legislature identified the same as a matter, which requires enquiry judicially.

15. Reliance was also placed in ANDAL RAGHAVAN v. DEPUTY COMMISSIONER, ENDOWMENTS DEPARTMENT, KAKINADA[8], and at para 10, it was observed as hereunder:

"The declaration of a person as founder or member of the founder's family under section 87(1)(h) of the Act by the Deputy Commissioner of Endowments or by any competent authority before coming into force of Section 87(1)(h), is altogether different from the appointment of a qualified founder or a qualified member of the founder's family as trustee under Section 17(1) of the Act (see G. Rajendranadh Goud v. State of A.P., 2006 (1) ALD 705). Every founder or member of the founder's family cannot be said to have an enforceable right for being appointed as a trustee or Chairman of Trust Board. As a matter of course, such person has to

fulfil the qualifications in Section 18 of the Act and Rule 8 of the Rules and should not incur disqualification under Section 19 of the Act. Further even in a case where the number of applications received by the competent authority is equal to the number of trustees to be appointed, even then no applicant can be said to have any right for appointment. The antecedents of all the applicants got to be verified by the subordinate officers and the verification report has a bearing on the exercise of the power by the competent authority. Therefore unless and until the application is made by the person claiming to be founder or member of the founder's family giving all the details in Form No.II and unless and until the antecedents of such person are verified by the Verification Officer, such person cannot be appointed as a trustee. Rule 7 of the Rules clearly lays down that, "competent authority shall scrutinize the applications along with the report of the Verifying Officer and pass orders appointing trustees". Therefore, the submission of the learned counsel for the petitioner that there is no necessity for the founder or member of the founder's family to apply in Form No.II under Rule 5(1) of the Rules, after publication of notice in Form No.1, cannot be countenanced. If the same is accepted and a member of the founder's family is appointed without there being an application, it would lead to number of complications besides showing up problems and difficulties in a case where there are more than one recognized member from the founder's family".

16. Reliance was also placed in K. SUSHEELA v. COMMISSIONER OF ENDOWMENTS, HYDERABAD[9]. In INTURI VENKAIAH v. GOVERNMENT OF ANDHRA PRADSH, REVENUE (ENDOWMENTS) S.4 DEPARTMENT, SECRETARIAT, HYDERABAD, REP.BY ITS SECRETARY in

W.P.No.26390 of 2003, it was observed as hereunder;

> "The impugned order cannot be said to suffer from any vice. After Amendment of the Act, by Act No.27 of 2002 clause (h) has been inserted in sub-section (1) of Section 87 . Be it noted, section 87 confers powers on the Deputy Commissioner to decide certain disputes and any decision of the Deputy Commissioner has to be confirmed by the Commissioner. Under Section 87(1)(h) of the Act, a dispute as to whether a person is member of the founder's family is to be decided by the Deputy Commissioner. The Assistant Commissioner or any authority has no power to decide the question. In a recent unreported judgment in W.P.No.25598 of 2003 dated 9.12.2003, I considered this aspect on the matter. The Assistant Commissioner decided the dispute in favour of respondents 2 and 3 some time in April, 2002 much before the Amendment Act came into the force. The same, in my opinion, does not make any difference. The statute or the rules made there under, did not provide specifically for recognition of a member of the founder's family for being appointed as Chairman of the Board of Trustees. Therefore, by reason of the statutory recognition of such right, any administrative instructions issued earlier to the amendment conferring powers on Assistant Commissioner cannot be said to have conferred any rights on respondents 2 and 3. In that view of the matter, the submission of the learned counsel for respondents 2 and 3 Sri N. Gurugopal that the amendment is only prospective, cannot be accepted.

17. In GURU PRASAD v. COMMISSIONER OF ENDOWMENTS DEPARTMENT, GOVERNMENT OF ANDHRA PRADESH, TILAK ROAD, HYDERABAD in W.P.No.25598 of 2003 it was observed as hereunder:

> " After perusing Section 87(1)(h), there cannot be any doubt about the legal position. Even though the application was made in 1997, it was decided on 30.09.2003, at which point of time, the Assistant

> Commissioner is not competent authority to decide whether a person is a founder or a member of the founder's family. For this short reason, the impugned order is set aside and the petitioner is given liberty to approach the Deputy Commissioner of Endowments having jurisdiction and file application under Section 87(1)(h) of the Act, which shall be decided within a period of four weeks after such presentation of the application.

18. In BANDA RAGHAVENDRA RAO v. THE ASSISTANT COMMISSIONER, ENDOWMENTS, VIJAYAWADA, KRISHNA DISTRICT in W.P.No.3532 of 2006, dated 11.09.2007, this Court, at para 10 observed as hereunder:

> "In **G.RAJENDRANATH GOUND V/s. STATE OF ANDHRA PRADESH AND ORS**[10][1], while dealing with Section 87 (1) (h), 15, 17 (1) and 20 of A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 held that when a member or members of founder's family are not determined or declared, it is only Deputy Commissioner, who has to conduct enquiry and any other authority, be it Government, Commissioner of Endowments or Assistant Commissioner cannot have any jurisdiction to conduct such enquiry contemplated under section 87 (1) (h) of the Act. The learned Judge of this Court observed at para nos. 28, 29, 33 and also 35 as hereunder:
>
> > Reading Section 17 with appointment Rules, it becomes clear the nature of enquiry by the competent authority is only to see whether any aspirant incurs any disqualification and whether such a person is suitable and eligible for being appointed as trustee. The very nature of power exercised under Sections 15, 17 and 20 read with the relevant Rules would leave no doubt that the functions are purely of administrative

in nature, no quasi judicial functions are involved. Indeed the Rules do not even contemplate issue of a notice before an application is rejected and the statute does not confer any right on any person for being appointed as a matter of right as trustee of a temple or institution. That is the reason why Explanation I under Section 17(1) employs the term "recognized" while dealing with preferential right of a person or a member of the founder's family. Explanation II employs terms "declared or recognized". Who "declares" that a person is founder or member of family of founder?

Section 87(1)(h) of the Act uses the phrase "to enquire into and decide any dispute as to the question whether a person is a founder or a member from the family of the founder of an institution or endowment". Therefore, the provision dealing with enquiries contemplates enquiry to decide the question as to whether a person is a founder of the institution or not, whereas the Explanation I to Section 17(1) of the Act employs the phrase "a person who has founded the institution and recognized as such by the competent authority" to be given preference in the appointment as a member of Board of Trustees. The distinction in the language employed is a clear indication that if the dispute arises as to who is the person or persons who are members of the family of the founder or a founder, the enquiry has to be necessarily conducted by the Deputy Commissioner of Endowments. At the time of appointment, unless and until such person who is determined and declared to be a founder or a member of the family of the founder, is declared or recognized as such founder or member of the founder's family, no purpose would be served. What is the scope of "recognition" at the time of appointment of Board of Trustees?

As noticed hereinabove the Explanation II to Section 17(1) of the Act describes children, grand children in agnatic line of succession as members of the family of the founder. The proviso to sub-section (1) of Section 17 casts an obligation on the appointing authority to appoint either the founder or one of the members of the family of the founder to be trustees in the Board. Whereas Explanation I requires a founder or a member of the family of a founder to be

'recognised' by the appointing authority. To reconcile Section 87(1)(h) of the Act, which confers power on Deputy Commissioner to decide question as to who is member of the founder's family and Section 17(1) which empowers the appointing authority to 'recognise', one should adopt the contextual interpretation while interpreting both the provisions separately and should adopt harmonious construction of both the provisions to avoid any conflict. Doing so, this Court is of considered opinion that when there is a dispute among the members of the founder, as to who is or who are members of the founder's family, an enquiry has to be necessarily conducted by the Deputy Commissioner of Endowments under Section 87(1)(h) of the Act. In a situation where this exercise has already been completed either before the Judgment of the Supreme Court in **Pannalal Bansilal v State of A.P.,** (supra) or while the circular issued by the Commissioner of Endowments was in operation or before coming into force of the amended Section 87(1)(h), unless and until such person or persons are recognized by the appointing authority under Section 17(1) (under both the Explanations), no such person can be appointed as a member of the Board of Trustees. In the event of 'recognition' of all successors of the founder as members of the founder's family, it is for the appointing authority to recognize one of them subject to fulfilling the qualifications as one of the members of the family of the founder for being appointed as a trustee. Therefore, the conclusion is that when a member or members of the founder's family are not determined or declared, it is only the Deputy Commissioner who has to conduct enquiry and any competent authority – be it Government; Commissioner of Endowments or Deputy commissioner or Assistant Commissioner – cannot have any jurisdiction to conduct such enquiry contemplated under Section 87(1)(h) of the Act.

Before coming into force of 1987 Act, and after coming into force of 1987 Act, the petitioner herein filed applications being O.A.No.1 of 1997 (under Section 77(c)(c) of 1966 Act) and O.A.No.40 of 1997 (under Section 87(1)(e) of 1987 Act). No doubt, in the orders passed in these two original applications, there are

> certain observations made which might be construed as conferring some benefit on the petitioner. The fact is that so far no enquiry has been conducted by the competent authority i.e., Deputy Commissioner of Endowments or the Government before coming into force of the amendment to Section 87(1) or after coming into force of that provision. Therefore, in the background facts of this case, the notice of enquiry issued by the Commissioner is without jurisdiction and to that extent the submission of the petitioner's counsel commends itself to this Court. But the other submission that the Government alone should conduct enquiry to decide the question as to who among the four sons of Jagannath Goud is a question which squarely falls within the ambit of Section 87(1)(h) of the Act and therefore necessarily the jurisdictional Deputy Commissioner of Endowments alone has competence to decide the question. The order of this Court dated 03.08.2005 cannot be understood as directing an incompetent authority to conduct enquiry under Section 87(1)(h) of the Act.
>
> In the result, for the above reasons, this Court declares that the Commissioner of Endowments is incompetent to conduct any enquiry under Section 87(1)(h) of the Act. He is therefore directed to send back the entire material including the applications made by the third respondent herein seeking recognition as a member of the founder's family, to the Deputy Commissioner of Endowments concerned immediately so as to enable the latter to complete the enquiry after giving notice to the rival claimants, within a period of six weeks from the date of receipt of a copy of this order.

19. In the peculiar facts and circumstances, no doubt, it is a case where on some representation made by respondent No.4, the same was treated as revision by the first respondent and an interim order was made. It is also true that the leave application said to have been made by Respondent No.4, preferred to the Government also is

said to be pending. It is also true that the said order made by the first respondent-Government alone had been challenged in the present writ petition. But, however, in the light of the facts and circumstances and also the nature of the order made by the third respondent-Assistant Commissioner of Endowments, Nellore and also in the light of Section 87(1)(h) of the Act referred to supra, this Court is satisfied that the initial order made by the Assistant Commissioner Endowments, Nellore, respondent No.3 itself is one without jurisdiction since respondent No.3 is not the competent authority to make such an order. Even if the impugned order is not in accordance with law when the effect of touching an order would result in reviving of the other illegal orders, the writ Courts normally would not lean in favour of such revival of the illegal orders made by quasi judicial authorities of the lower hierarchy.

20. Hence, taking the over all facts and circumstances into consideration, in view of the fact that the very initial order made by Respondent No.3 being without jurisdiction, it is needless to say that the other orders of either respondent No.2 or respondent No.1 may not have the legs to stand and accordingly, all these orders are liable to be set aside. Certain submissions were made that there are no rival claims. It is needless to say that this aspect also may have to be gone into only by the competent authority as ordained by the provisions of the statute. In this view of the matter, let all these records be

transmitted to the concerned Deputy Commissioner, Endowments. However, in the light of the peculiar facts and circumstances, without expressing any further opinion, apart from the records be transmitted to the concerned Deputy Commissioner, Endowments, it is also made clear that the writ petitioner is at liberty to file appropriate application in this regard in accordance with Rules governing the field, within a period of two weeks from today and in the event of such application being made, let the concerned Deputy Commissioner, Endowments having jurisdiction decide such application also while deciding the question in controversy in the light of the records, which are being transmitted, within a period of four weeks thereafter.

21. Accordingly, the Writ Petition is disposed of. No order as to costs.

P.S.NARAYANA, J

Dated:12.10.2007

sj

[1] 1982(2) ALT 3 (NRC)

[2] 1980 (1) ALT 157

[3] 1979 (1) ALT 298.

[4] 1991(II) ALT 673

[5] AIR 2001 Supreme Court-2436 equivalent to 2001 SCC 7-106,

[6] 2001 ALT 3-13 equivalent to 2001 ALD 3-61.

[7] 2006 ALT-2-115 equivalent to 2006-ALD-1-705.

[8] 2007(5)ALD 661

[9] 2000-ALT-5-366 equivalent to 2000-ALD-5-544.

[10][1]) 2006 (1) ALD-705